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नई दिल्ली, शनिवार, फरवरी 22, 1986/फाल्गुन 3, 1907

No. 5]

NEW DELHI, SATURDAY, FEBRUARY 22, 1986/PHALGUNA 3, 1907

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii) PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों को छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएँ
Orders and Notifications Issued by Central Authorities (other than Administrations of Union
Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 1 फरवरी, 1986

आ. प्र. 27 :—लोक प्रतिनिधित्व अधिनियम, 1950 (1950 का 43) की धारा 13A की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत निर्वाचन आयोग, मिज़ोरम संघ के परामर्श से श्री लालखामा के स्थान पर श्री तपस रिंगु, आई. ए. एन., मिज़ोरम संघ के विकास आयुक्त को उनके कार्यभार सम्हालने की तारीख से अगले आदेशों तक मिज़ोरम राज्य के मुख्य निर्वाचन अधिकारी के रूप में एतद्वारा नामनिर्दिष्ट करता है।

[सं. 154/निर्वा./85]

आदेश से,

आर. पी. भल्ला, सचिव,
भारत निर्वाचन आयोग

ELECTION COMMISSION OF INDIA

New Delhi, the 4th February, 1986

O.N. 27.—In exercise of the powers conferred by sub-section (1) of section 13A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission of India, in consultation with the Government of Mizoram hereby nominates Shri Takap Ringu (IAS) Development Commissioner of Union Territory of Mizoram as the Chief Electoral Officer for the Union Territory of Mizoram with effect from the date he takes over charge and

until further orders vice Shri Lalkhama, IAS.

[No. 154/MIZ/85]

By Order,

R. P. BHALLA, Secy.
Election Commission of India

नई दिल्ली, 10 फरवरी, 1986

आ. प्र. 27 :—1985 का निर्वाचन अधीन सं. 5 में इलाहाबाद उच्च न्यायालय (लखनऊ बेंच) के तारीख 11-10-85 के आदेश की लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 की उपधारा (3) के अनुसरण में निर्वाचन आयोग एतद्वारा प्रकाशित करता है।

[सं. 82/उ. प्र. निर्वा. सं. 5/85 (लखनऊ)]

आदेश से,

एस. डी. पेशाद अवसर सचिव,
भारत निर्वाचन आयोग

New Delhi, the 10th February, 1986

O.N. 28.—In pursuance of the sub-section (a) of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the order dated the 11-10-1985 of the High Court of Judicature at Allahabad, (Lucknow Bench) in Election Petition No. 5 of 1985.

[No. 82/UP-IIP/5/85 (LKW)]

By Order,

S. D. PERSHAD, Under Secy.,
Election Commission of India

A.F.R. No. 139 of 1985

IN THE HON'BLE HIGH COURT OF JUDICATURE
AT ALLAHABAD

(LUCKNOW BENCH, LUCKNOW)

Election Petition No. 5 of 1985

C. M. Application No. 117(E) of 1985 and

C. M. Application No. 118(E) of 1985

Shitla Prasad Sonkar alias Shital,
aged 35 years, son of Maharaj Din,
resident of Mohalla Banyan Tola Bulaki Gunj,
P. S. Kotwali, Rae Bareilly.

Versus

1. Arun Kumar Nehru, son of not known,
resident of 3, Moti Lal Nehru Road,
New Delhi.

2. Returning Officer,

23, Rae Bareilly Parliamentary Constituency,
Rae Bareilly.

3. Sahayak Nirvaclan Adhikari,

23, Rae Bareilly Parliamentary Constituency,
Rae Bareilly. Respondent.

Counsel for Petitioner.—Shri B. Solaman, Shri M. Deeley,
Sri J. K. Saini, Sri A. K. Asthna, Sri Jafar
Mahmud.

Counsel for Opp. Party.—Sri J. Bhalla.

Petition under section 81 of the representation of peoples
Act, 1951

Lucknow dated.—11-10-1985

Hon'ble S. Saghir Ahmad, J.—By this election petition filed under the Representation of People Act, 1951 (hereinafter referred to as the Act), the petitioner has challenged the election of respondent no. 1 as Member of the Lok Sabha from 23-Rae Bareilly Parliamentary Constituency, on the grounds, inter alia, that his (petitioner's) nomination paper had been wrongly rejected by the Returning Officer and that, in any case, the poll should have been counter-manded on account of the assassination of one of the contesting candidates, namely, Shri Har Swaroop Vajpai, who was murdered in the evening of 23-12-84.

The election programme, as set out in para 2 of the petition was as follows :—

Last date of filing nomination paper	27-11-84.
Dated of scrutiny of nomination paper	28-11-84.
Date of withdrawal of candidature	29-11-84.
Date of poll if necessary	24-12-84.
Date of counting of votes.	18-12-84.

The petitioner being an elector from 109—Rae Bareilly Assembly Segment of the aforesaid Lok Sabha Constituency, filed his nomination paper before the Returning Officer. What happened thereafter and how was his nomination paper dealt with by the Returning Officer has been stated by him in para 5 of the election petition which is quoted below :—

"5. That in the Electoral Roll full name of the petitioner Shitla Prasad Sonkar was not mentioned but it indicated petitioner's name as Shital by which name the petitioner was commonly known. Rest of the details of the Electoral roll tallied with the details furnished in the nomination paper by the petitioner including parentage, age and residence. The scrutiny of the nomination paper was done by the Returning Officer on November, 28 1984. No objection to the nomination paper of the petitioner was raised. However, the Returning Officer wrongly rejected the nomination paper of the petitioner on the ground that the name of the candidate in

the nomination paper was not found in the Electoral Roll. The petitioner satisfied the Returning Officer by submitting a written application mentioning therein that Shital and Shitla Prasad Sonkar is one and the same person and indicated that the petitioner was commonly known as Shital. But the Returning Officer took a hyper technical view of the matter and rejected the nomination paper of the petitioner without permitting the petitioner to correct his technical and printing error. The petitioner pointed out to the Returning Officer that proviso of the sub-section 4 of Section 33 enjoins the duty on the Returning Officer and empowers him to overlook such technical and printing error."

The fact relating to the other ground, namely, counter manding of the poll on account of the death of Sri Har Swaroop Vajpai (one of the contesting candidates) are contained in paras 6 to 10 of the petition. Para 6 of the petition, which is relevant for the present purposes, is quoted below :—

"6. That one Har Swaroop Vajpai son of Sri Sada Shiv Bajpai resident of village Rampur Samohda P. S. Bachrawan district Rae Bareilly was also a duly nominated contesting candidate for election to Lok Sabha from the said Rae Bareilly Parliamentary Constituency. His nomination paper after scrutiny under Section 36 of the R. P. Act was found valid and he did not withdraw his candidature under section 37 of the R. P. Act. There was resentment in the constituency on the candidature of Arun Nehru, respondent No. 1 and the alignment of parties and candidates immediately before the date of poll reduced the chances of success of the said Arun Kumar Nehru, respondent no. 1. Sri Har Swaroop Vajpai had taken a leading part in the alignment of the candidates against Sri A. K. Nehru and he became a potential danger to the respondent no. 1. In the evening of 23-12-1984 dead body of Sri Har Swaroop Vajpai was found lying on Lucknow-Rae Bareilly Road in between Bachrawan and Pohurawan and this fact was reported by Constable Pathak of P. S. Bachrawan to Smt. Kamla alias Ram Rati Vaipayee, wife of the deceased Har Swaroop Vajpai at 9 P.M. on December, 23, 1984. The petitioner had also visited the spot and had gone to P. S. Bachrawan along with Sri J. N. Misra another contesting candidate and it was revealed at the P. S. that a wireless message had already been sent at 8.30 P.M. by the Station Officer P. S. Bachrawan to the Control Room at Rae Bareilly on December 23, 1984 about the murder of Har Swaroop Vajpai. The Returning Officer, Sri Pullak Chatterjee, who also happened to be District Magistrate of Rae Bareilly visited P. S. Bachrawan along with Superintendent of Police Rae Bareilly, on December 23, 1984 at 11 P. M. and saw the dead body of Sri Har Swaroop Vajpai."

It has been stated by the petitioner that Srimati Kamla, wife of Sri Har Swaroop Vajpai, wanted to lodge an F.I.R. at P. S. Bachrawan but he police hesitated to record it under the influence of respondent no. 1. But ultimately the F.I.R. was recorded at 3.15 A.M. on December 24, 1984 on a written report of Srimati Kamla and a crime case No. 167 of 1984 under section 302 I.P.C. was registered at the police station on the basis of the said report. An attempt was made to meet the Returning Officer early in the morning so that an application could be given to him for counter-manding the poll on account of the death of one of the contesting candidates but the Returning Officer did not meet anyone and instead sent word through "his Orderly that the persons who had gone to meet him may contact the Assistant Returning Officer, Sri Ram Chand Srivastava but the Assistant Returning Officer declined to accept the application on the ground, (which he is said to have recorded in writing) that he was not competent to receive documents for and on behalf of the Returning Officer. The Assistant Returning Officer put his signature below which

he put down the date and time as December 24 1984 at 5.55 A.M. A telegram was also sent to the Election Commissioner of India by Sita, daughter of Sri Har Sawroop Vajpai, at 12.30 P.M. on December 24, 1984. The counting of votes took place on December 28, 1984 at Rae Bareilly. A written request was made by one Sri Jagdish Narain Misra that the counting should be postponed as the entire process of election, after the death of Sri Har Swaroop Vajpai, was void. The Returning Officer did not accept the request and proceeded with the counting of votes and declared the result on December 29, 1984 and respondent no. 1 (Arun Kumar Nehru) was declared elected.

The prayer made in this election petition is that the election of respondent no. 1 be declared void.

There are three respondents in this election petition. Respondent no. 1 is the returned candidate, namely, Sri Arun Kumar Nehru; respondent no. 2 is the Returning Officer and respondent no. 3 is the Assistant Returning Officer.

Service of the notice of this election petition on respondent nos. 2 and 3 was held to be sufficient by order dated 9-7-85. Respondent no. 2 (Returning Officer) filed an application (Civil Misc. Application No. 53(E) of 1985) for time to file written statement which was allowed and he was directed to file written statement by 2nd September, 1985. He did not file the written statement on 2nd September, 1985 but then he filed an application (Civil Misc. Application No. 117(E) of 1985) under Section 86 of the Act for dismissing the election petition on the ground of non-compliance of the provisions of Section 81(3). It has been pleaded by him in this application that the copy of the election petition which has been served on him is not the true copy of the original election petition inasmuch as two paras of the election petition, namely, paras 5 and 6 have not been typed out in the copy which has been served upon him nor is there a mention of paragraph number in the verification clause. The copy also does not bear the date. He has, along with this application, filed the original notice which was served upon him as also the copy of the election petition which was delivered to him and the original (registered) postal envelope in which the copy was sent to him.

The application was filed on 10-10-85 before Hon'ble K. S. Varma, J. who directed it to be laid before me today. A copy of this application was served on Sri J. K. Saini, counsel for the petitioner on 8-10-85.

The petitioner has filed an application (C.M. An. No 118(E) of 1985) today in which the prayer made is that he may be allowed to serve a true copy of the election petition on respondent no. 2. In the accompanying affidavit, it has been inter alia stated as under :—

"4. That with reference to the contents of paragraphs nos. 2 and 3 of the affidavit, it is respectfully submitted that the infirmities pointed by Sr. Pullock Chatterjee are not of substantial nature. It appears that the infirmities crept into the copies served on Shri Chatterjee on account of inadvertance of the typist who prepared the copies from the original Election Petition for the purposes of submission in the Court along with Election Petition and are of merely typographical errors. The infirmities are neither deliberate nor motivated.

5. That the contents of paragraph No. 4 of the affidavit being more reproduction of statutory provision, do not call for any reply.

6. That the contents of paragraph no. 5 of the affidavit are emphatically denied. The alleged non-compliance is of not such as to invite the extreme penalty of dismissal of the Election Petition. The deponent is advised to state that what is required in law, is substantial compliance and not literal. The deponent is also advised to state that it is well settled that law does not take notice of minor mistakes.

7. That in any case the deponent is ready to serve on the respondent no. 2, a true copy of the Election Petition, afresh and it would be in the interest of justice to permit the petitioner to do so."

As observed earlier the respondent no. 2 (Returning Officer) has filed the original notice, the copy of Election Petition as also the original registered cover. Counsel for the petitioner, Sri Amlesh Kumar Asthana, who has filed his power on behalf of the petitioner today has admitted the genuineness of these documents and has made on them the necessary endorsements. Sri J. K. Saini, the other counsel for the petitioner, is also present.

Learned counsel for the petitioner has submitted that the lapse pointed out by respondent no. 2 is a mere typing error which is liable to be condoned particularly as the petitioner is ready and willing to supply to respondent no. 2 a correct copy of the election petition during the course of the day today so that respondent no. 2 may file the written statement by the next date fixed.

In the copy of the election petition served on respondent no. 2, paras 5 and 6 of the election petition (already reproduced above) which contain substantial allegation of facts were admittedly not included and the question is whether the non-inclusion of these paras in the copy which was served on respondent no. 2 is a mistake of a minor nature or is in the nature of inexcusable fatality.

Section 81 of the Act provides as under :—

"81. Presentation of petitions—(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

Explanation.—In this sub-section, 'elector' means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition."

Section 81(3) quoted above consists of two parts :—

(i) Every election petition shall be accompanied by as many copies as there are respondents mentioned in the petition and,

(ii) every copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

The consequence of non-compliance with the above provisions is indicated in Section 86(1) which may also be quoted below :—

"86. Trial of Election petitions.

(1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117."

The language employed in the provisions contained in Section 81(3) and the consequence of non-compliance with that provision make it clear that the provisions are mandatory.

In Satya Narain vs. Dhuja Ram (A.I.R. 1974 S.C. 1185) It was laid down as under :—

"We are, therefore, clearly of opinion that the first part of Section 81(3) with which we are mainly concerned in this appeal is a peremptory provision and total non-compliance with the same will entail dismissal of the election petition under section 86 of the Act."

(Emphasis supplied).

8. The second part of Section 81(3) has also since been held to be mandatory. In *Shatiff-ud-Din vs. Abdul Ghani Lone* (A.I.R. 1980 S.C. 303), it has been observed by the Supreme Court as under :—

"It is true that Section 81(3) of the Act is purely procedural in character and that ordinarily procedural law should not be given that primacy by courts as would defeat the ends of justice. But if a law even though it may be procedural in character insists that an act must be done in a particular manner and further provides that certain consequence should follow if the act is not done in that manner, courts have no option but to enforce the law as it is."

Three other Supreme Court decisions, namely, *M. Karunanidhi v. H.V. Handa* (A.I.R. 1983 S.C. 558); *Mithlesh Kumar vs. Bajdyanath* (A.I.R. 1984 S.C. 305); *Rajendra Singh v. Smt. Usha Rani* and others (A.I.R. 1984 S.C. 956) are judgments of equally effective judicial impact as the Supreme Court did not, in these cases, tolerate any departure from the mandatory requirements of law.

The provisions of Section 81(3) being mandatory, non-compliance thereof has to result in the dismissal of the election petition as contemplated by Section 86(1).

An election petition has, therefore, to comply with both the parts of Section 81(3), i.e. he has not only to file as many copies of the election petition as there are respondents, he has also to attest each copy under his own signature to be a true copy of the petition.

In three recent decisions of the Supreme Court, namely, *M. Karunanidhi v. H. V. Handa* and others (A.I.R. 1983 S.C. 558); *Mithlesh Kumar Pandey vs. Baij Nath Yadav* (A.I.R. 1984 S.C. 305 and *Rajendra Singh vs. Smt. Usha Rani* and others (A.I.R. 1984 S.C. 956) the election petitions were dismissed for non-compliance of Section 81(3) as the petitioner had filed incorrect copies with the election petition. In *Rajendra Singh's* case (supra) their Lordships of the Supreme Court observed that a perusal of Section 81(3) and Section 86 of the Act gives the impression that they do not contemplate filing of incorrect copies at all and if the election petitioner disregards the mandate contained in Section 81(3) by filing incorrect copies, he takes the risk of the petition being dismissed in limine under Section 86.

In view of the fact that paragraphs 5 and 6 of the original petition have not been included in the copy which has been served on respondent no. 2, the copy cannot be said to be a true copy of the original within the meaning of Section 81(3) of the Act and, therefore, the consequences indicated in Section 86(1) have to follow as laid down by Hon'ble the Supreme Court in the case referred to above.

The contention of the learned counsel for the petitioner that the omission was liable to be condoned as it was a mere typing error, cannot be accepted because at the time of filing of the election petition in this Court, care should have been taken to see that the copies of the petition are true copies of the original. As a matter of fact, the copy which has been served on respondent no. 2 has been endorsed

ed by the petitioner himself under his own signature as true copy of the original. He cannot legally pray for an opportunity to serve a fresh copy of the election petition on respondent no. 2 in addition to the copy already served on him. As a matter of fact, C.M. An. No. 118(E) of 1985 filed by the petitioner today is a totally misconceived application and is based on ignorance of the provisions of the Representation of People Act, 1951 under which such an application is not maintainable. The defect in not including paragraph 5 and 6 of the Election Petition in the copy is fatal and cannot be cured by allowing the petitioner to serve another copy of the election petition on respondent no. 2.

The rule of substantial compliance as laid down by the Supreme Court in *Murarka Radhey Shyam Ram Kumar vs. Roop Singh Rathore* and others (A.I.R. 1964 S.C. 1545) and *Ch. Subbarao vs. Member, Election Tribunal* (A.I.R. 1964 S.C. 1027) will not be applicable to the facts of the present case as in *Murarka's* case (supra) the only defects pointed out were that the copy of the petition did not contain the signature of the petitioner only at the foot of the petition although the original petition did not contain a signature at that place and that the verification clause of the copy did not contain para 14-g(ii), while in *Subbarao's* case (supra) the word "true copy" was not mentioned on the copy although it was a carbon copy of the typed script of the original and every page of the copy was attested by the petitioner under his signature to be a true copy.

An election petition has to comply with the requirements of Section 81 of the Act at the time when it is originally presented to an authorised Officer of the High Court and no such defect can be permitted to be rectified at any time thereafter. The rule of substantial compliance has no application to a case of non-compliance of the mandatory provisions of Section 81(3). An election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and the Court possesses no common law power (See *Jagan Nath v. Jaswant Singh* : A.I.R. 1954 S.C. 210; *N. P. Ponnuseelan v. Returning Officer Namakkal Constituency* : A.I.R. 1952 S.C. 64 and *Charan Lal Sahy vs. Nandkishore Bhatt* : A.I.R. 1973 S.C. 2464).

In view of the above, the petitioner's application (C. M. Application No. 118(F) of 1985) which he has filed today and in which he has prayed for permission to serve another copy of the election petition on respondent no. 2 is rejected. The application of respondent no. 2 (C. M. Application No. 117(E) of 1985) by which he has prayed that the election petition may be dismissed under Section 86 of the Act is hereby allowed and the election petition is dismissed for non-compliance of the mandatory provisions of Section 81(3) of the Act. Respondent No. 2 will be entitled to his costs.

Let Election Commission of India and the Speaker of the House of Parliament be informed and an authenticated copy of this judgement be sent to the Election Commission as required by the Act.

Sd/-

S. SAGHIR AHMAD.

11-10-1985.